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Supreme Court, U.S.
FILED

05-313 SEP 7 - 2005

OFFICE OF THE CLERK

No. 05-

IN THE

Supreme Court of the United States

JOANNE BURR,

Petitioner,

v.

HASBROUCK HEIGHTS POLICE DEPARTMENT; GEORGE NETELKOS; and COREY LANGE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a police officer's community care-taking function permit him to enter a person's house without a warrant and remove her to a psychiatric hospital when she has threatened no one, is no threat to herself and has already turned off the music which was the claimed basis for the warrantless entry into her house?

2. Are police officers entitled to immunity from civil liability if they have no knowledge of clear statutory authority governing their conduct?

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Appendix C — Order Of The United States Court Of Appeals For The Third Circuit Denying Petition For Rehearing Dated June 17, 2005 ..... 19a

OPINIONS BELOW

The opinion of the Court of Appeals, dated May 17, 2005, can be found at 131 Fed. Appx. 799 (3d Cir. 2005) (App. A). The unpublished opinion of the district court is set forth at App. B.

BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals for the Third Circuit entered its ruling on May 17, 2005. Plaintiff petitioned for rehearing *en banc* on May 31, 2005. The Court of Appeals denied the petition on June 17, 2005 (App. C). The Supreme Court is authorized to consider this case pursuant to 28 U.S.C. § 1254(1).

STATUTES AND REGULATION INVOLVED IN THE CASE

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted

unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

N.J.S.A. 30:4-27.1. Legislative findings and declarations

a. The State is responsible for providing care, treatment and rehabilitation services to mentally ill persons who are disabled and cannot provide basic care for themselves or who are dangerous to themselves, to others or to property; and because some of these mentally ill persons do not seek treatment or are not able to benefit from treatment provided on an outpatient basis, it is necessary that State law provide for the voluntary admission and the involuntary commitment of these persons as well as for the public services and facilities necessary to fulfill these responsibilities.

b. Because involuntary commitment entails certain deprivations of liberty, it is necessary that State law balance the basic value of liberty with the need for safety and treatment, a balance that is difficult to effect because of the limited ability to predict behavior; and, therefore, it is necessary that State law provide clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, to others or to property, are involuntarily committed.

c. It is the policy of this State that persons in the public mental health system receive inpatient

treatment and rehabilitation services in accordance with the highest professional standards and which will enable those hospitalized persons to return to their community as soon as it is clinically appropriate. Further, it is the policy of this State that the public mental health system shall be developed in a manner which protects individual liberty and provides advocacy and due process for persons receiving treatment and insures that treatment is provided in a manner consistent with a person's clinical condition.

d. It is the policy of this State to encourage each county or designated mental health service area to develop a screening service and a short-term care facility which will meet the needs for evaluation and acute care treatment of mentally ill persons in the county or service area. The State encourages the development of screening services as the public mental health system's entry point in order to provide accessible crisis intervention, evaluation and referral services to mentally ill persons in the community; to offer mentally ill persons clinically appropriate alternatives to inpatient care, if any; and, when necessary, to provide a means for involuntary commitment. Similarly, the State encourages the development of short-term care facilities to enable a mentally ill person to receive acute, inpatient care in a facility near the person's community. Development and use of screening services and short-term care facilities throughout the State are necessary to strengthen the Statewide community mental health system, lessen inappropriate hospitalization and reliance on psychiatric

institutions and enable State and county facilities to provide the rehabilitative care needed by some mentally ill persons following their receipt of acute care.

N.J.S.A. 30:4-27.2. Definitions

Text of section effective until September 20, 2005

As used in this act:

h. "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available.

i. "Dangerous to others or property" means that by reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior and any recent act or threat.

m. "In need of involuntary commitment" means that an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs.

r. "Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

N.J.S.A. 30:4-27.3. Application of standards and procedures

The standards and procedures in this act apply to all adults involuntarily committed to a short-term care facility, psychiatric facility or special psychiatric hospital and all adults voluntarily admitted from a screening service to a short-term care facility or psychiatric facility. The standards and procedures in this act shall not apply to adults

voluntarily admitted to psychiatric units in general hospitals or special psychiatric hospitals, except as provided in section 11 or 20 of this amendatory and supplementary act [referring to N.J.S.A. 30:4-27.11 and N.J.S.A. 30:4-27.20].

N.J.S.A. 30:4-27.6. Bases for custody of person and transport to screening service by law enforcement officer

A State or local law enforcement officer shall take custody of a person and take the person immediately and directly to a screening service if:

a. On the basis of personal observation, the law enforcement officer has reasonable cause to believe that the person is in need of involuntary commitment;

b. A mental health screener has certified on a form prescribed by the division that based on a screening outreach visit the person is in need of involuntary commitment and has requested the person be taken to the screening service for a complete assessment; or

c. The court orders that a person subject to an order of conditional discharge issued pursuant to subsection c. of section 15 of this act [N.J.S.A. 30:27-15] who has failed to follow the conditions of the discharge be taken to a screening service for an assessment.